



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

SMC  
Docket No: 06359-00  
16 November 2000

MSGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]

Dear Master Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 20 September 2000, a copy of which is attached, and your letter dated 1 November 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. They did not find the section C narratives of the contested fitness reports for 1 January to 31 October 1997 and 1 November 1997 to 30 September 1998 to be unduly vague. They were unable to find your reporting officials were insensitive to the recovery period you needed. They concluded that regardless of whether you had periods of hospitalization or convalescent leave in excess of 30 days, your reporting seniors' not mentioning this in block 3d of the contested reports would not establish that they were insensitive to your medical problems. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure  
Copy to:  
Mr. Vaughan E. Taylor



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1610  
MMER/PERB  
20 SEP 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
MASTER SERGEANT [REDACTED] JR. [REDACTED] USMC

Ref: (a) MSgt [REDACTED] D Form 149 of 19 May 00  
(b) MCO P1610.7D w/Ch 1  
(c) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 13 September 2000 to consider Master Sergeant [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 970101 to 971031 (CH) -- Reference (b) applies
- b. Report B - 971101 to 980930 (DC) -- Reference (c) applies
- c. Report C - 981001 to 981230 (TR) -- Reference (c) applies

2. The petitioner, via his legal counsel, argues that the fitness reports identified in paragraph one above are unjust because the reporting officials failed to take into account the petitioner's serious medical condition. During the periods covered, the petitioner was suffering from ulcerative colitis, and was taking prescribed medications which caused several side effects. It is the petitioner's contention, as supported by a statement from Lieutenant Commander [REDACTED] (Internal Medicine Specialist who treated the petitioner), that the side effects of the medications rendered him physically unable to perform at his usual level.

3. In its proceedings, the PERB concluded that all three reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

- a. The letters from [REDACTED] and [REDACTED] (enclosures (6) and (7) to reference (a)) provide a general overview of the petitioner's medical situation. Both infer the petitioner's medical condition and treatment could have impacted his military performance. The Board notes, however, that no concrete "cause and effect" examples as to just what the petitioner was or was not capable of doing in performing his billet assignment.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
MASTER SERGEANT [REDACTED] USMC

Nowhere do we find anything identifying the physical demands of his billet that he was incapable of handling.

b. In Item 5a of all three reports, there is information that the petitioner took and passed Physical Fitness Tests (PFTs) with first class scores. Section C comments in Reports A and C mention the petitioner's involvement in youth activities, and Dr. [REDACTED] states the petitioner was an official for middle and high school sporting events during this overall period. This surely indicates the petitioner was continuing to function at an overall very active level.

c. All of the advocacy letters aside, nothing in reference (a) substantiates in any way that the reporting officials involved in the three challenged fitness reports were unaware, insensitive, or unappreciative of the petitioner's physical condition, or did not take his situation into consideration when preparing their respective evaluations.

d. We note that all three reports contain marks of "outstanding" in Items 14b and 14c (personal appearance and military presence, respectively). This is hardly the evaluation of someone debilitated by an illness. Likewise, all three reports contain marks of "outstanding" in Item 14j (leadership) and appears to contradict the petitioner's allegation that his Reporting Seniors were displeased with his overall leadership style.

e. Succinctly stated, there is nothing furnished with reference (a) to show precisely how the petitioner may have rated more than what has been recorded in any of the reports at issue. As a final matter, the Board observes that by the petitioner's own timeline outlining his medical condition (enclosure (5) to reference (a)), he admits he had fully recovered by September 1998. In his letter at enclosure (7) to reference (a)), Doctor Sanders confirms that fact. Therefore, the petitioner's challenge to Report C, based on medical problems, has no basis.

4. The Board's opinion, based on deliberation and secret ballot vote, is that all three of the contested fitness reports should remain a part of Master Sergeant [REDACTED] official military record.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
MASTER SERGEANT [REDACTED] USMC

5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps